

Remarks:

*Regarding the rejection under 35 USC 112 of claims 4-6:*

In order to meet the Examiner's rejection, prior claim 6 has been canceled and the limitations of "a perborate, percarbonate, hydrogen peroxide or a mixture thereof" have been introduced into claim 4. Full support for this is found in the applicant's specification, see para. [0032 – 0034] of applicant's published specification.

*Regarding the rejection of claims 1-13, 17 and 20 under 35 USC 112, second paragraph:*

The objected-to claims have been amended to address and overcome the Examiner's rejection. Withdrawal of the rejection is respectfully requested.

*Regarding the rejection of claims 1-13 under 35 USC 103(a) in view of WO 95/19132 (hereinafter "WO132"); in combination with WO 02/083829 (hereinafter "WO829") or US 5043089 to Nollet (hereinafter "Nollet"):*

The applicant traverses the grounds of rejection in view of the WO132 reference in further combination with the WO829 or Nollet references.

With respect to the primary reference, WO132 the as the Examiner has correctly pointed out, that document discusses in a very broad and expansive manner various constituents which may be present either necessarily or optionally in a dishwashing machine detergent composition, including bleaching agents, peroxides, percarbonates, perborates, surfactants, enzymes, builders and the like. As is readily seen by simple inspection, the text of WO 95/19132 is rather copious and discusses many, many additional constituents which might be used in conjunction with the preferred peroxide species disclosed in WO132. Indeed the WO132 reference is very properly analogized to a chemical supply handbook with respect to the scope of individual constituents recited within the four corners of that reference. However, while WO132 includes broad recitations of constituents and certain prior art compositions, there is no specific teaching, nor suggestion in the art whereby one of appropriate skill would be led to modify the WO132 reference to provide the type of compositions as presently claimed by the present

applicant. Clearly, as the Examiner admits in the Office Action, WO132 is silent as to the utility of sulphophenylalkylcarbonates in such compositions. This is not surprising as a review of WO132 solves its technical problem in a completely different way, namely in the specification of the specific peroxide species. Thus, the WO132 document provides a useful but very distinguishable composition.

The applicant disagrees with the Examiner that the consideration of the WO829 or the Nollet reference would cure the flaws of the WO132 reference as it is the applicant's view that such documents would at the outset not be considered by a skilled artisan and if considered do not provide the appropriate teaching or motivation to suggest the use of sulphophenylalkylcarbonates in addressing and overcoming the specific technical problems faced by the present inventors.

The Examiner is again respectfully reminded that with regard to lodging a rejection based on obviousness section MPEP 2143 states that three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, not in applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991). Further, unpatentability based on "anticipation" requires that the invention is not in fact new. See *Hoover Group, Inc. v. Custom Metalcraft, Inc.*, 66 F.3d 299, 302, 36 USPQ2d 1101, 1103 (Fed. Cir. 1995) ("lack of novelty (often called 'anticipation') requires that the same invention, including each element and limitation of the claims, was known or used by others before it was invented by the patentee"). Anticipation requires that a single reference describe the claimed invention with sufficient precision and detail to establish that the subject matter existed in the prior art. See, *In re Spada*, 911 F.2d 705,

708, 15 USPQ2d 1655, 1657 (Fed. Cir. 1990). It is the applicant's view that these criteria are not met. Accordingly withdrawal of the grounds of rejection is deemed to be proper.

Both the WO829 and the Nollet references are distinguishable from the present invention in that they are directed to laundry treatment compositions and methods for their use in the treatment of textiles and garments. At the threshold it is contended that a skilled artisan would dismiss out of hand these two documents as being related to different compositions used in different machines, e.g., laundry washing liquors under different conditions to treat different substrates than plastics substrates to be cleaned in an automatic dishwashing machine. Nor, is there any teaching or suggestion in the latter two prior art documents which would provide any motivation, or any expectation of success to a skilled artisan reviewing these three documents to have any reason to import the sulphophenylalkylcarbonate type compounds, which are not shown in either WO829 or Nollet to have any beneficial effect on the loosening or removal of difficult-to-remove stains from hard, formed plastic surfaces (plastic wares), or to modify the WO829 of the Nollet laundry compositions for use in an automatic dishwashing machine.

In summary, while the Examiner has sought to "reconstruct" the applicant's claimed design, as noted above, the prior art fails to include the requisite elements which would be essential to produce the applicant's claimed design, even if there had been a motivation to do so. Rather the applicant contends that the Examiner's grounds of rejection is at, at best, a hindsight reconstruction, using applicant's claim as a template to reconstruct the invention by picking and choosing amongst isolated disclosures from the prior art. This is impermissible under the law. For example, in *In re Fritch*, 972 F.2d 1260, 1266, 23 USPQ2d 1780, 1784 (Fed. Cir. 1992), the Federal Circuit stated:

"It is impermissible to use the claimed invention as an instruction manual or "template" to piece together the teachings of the prior art so that the claimed invention is rendered obvious. *In re Gorman*, 933 F.2d 982, 987, 18 USPQ2d 1885, 1888 (Fed. Cir. 1991). This court has previously stated that "[o]ne cannot use hindsight reconstruction to pick and choose among isolated disclosures in the prior art to deprecate the claimed invention." (quoting *In re Fine*, 837 F.2d at 1075, 5 USPQ2d at 1600)

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The present rejection fits the court's description of what may not be done under § 103(a), and thus it is the applicant's position that the rejection under 35 USC 103(a) is improper and should be withdrawn.

*Regarding the rejection of claims 15-20 under 35 USC 102(b) in view of WO829 or Noll et:*

In this paper the applicant cancels claims 15-20, which renders the current basis of rejection moot. The applicant reserves the right to reinstate these claims at a later date, or in a later application, e.g., a divisional patent application derived from the present application.

In view of the foregoing amendments to the claims and remarks presented, withdrawal of all grounds of rejection and allowance of the claims to grant is requested. Early issuance of a *Notice of Allowability* is requested.

Should the Examiner in charge of this application believe that telephonic communication with the undersigned would meaningfully advance the prosecution of this application, they are invited to call the undersigned at their earliest convenience.

#### **PETITION FOR A THREE-MONTH EXTENSION OF TIME**

The applicants respectfully petition for a three-month extension of time in order to permit for the timely entry of this response. The Commissioner is hereby authorized to charge the fee to Deposit Account No. 14-1263 with respect to this petition.

#### **CONDITIONAL AUTHORIZATION FOR FEES**

Should any further fee be required by the Commissioner in order to permit the timely entry of this paper, the Commissioner is authorized to charge any such fee to Deposit Account No. 14-1263.

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JUL 26 2006

Respectfully Submitted;

Andrew N. Parfomak

Andrew N. Parfomak, Esq.  
Reg. No. 32,431  
Norris, McLaughlin & Marcus, PC  
110 East 42<sup>nd</sup> St., 30<sup>th</sup> Floor  
New York, NY 10017

Tel: 212 808-0700

26 July 2006

Date:

Certification of Telefax Transmission:

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